

UNITED STATES DISTRICT COURT

District of Oregon

UNITED STATES OF AMERICA

v.

No. CV 05-153-MO
(No. CR 04-76-MO)

DAVID WILLIAMS,

OPINION AND ORDER

Defendant


MOSMAN, J.,

Defendant David Williams moves to vacate, set aside or correct a judgment and sentence imposed pursuant to a plea agreement in an underlying criminal action. On May 20, 2004, Defendant entered a guilty plea for one count of unarmed bank robbery. The parties agreed the offense of conviction would be a level 22 offense, reduced three levels for acceptance of responsibility, and that the parties would jointly recommend a sentence at the low end of the guideline range. The probation office agreed the offense would be classified as a level 19 offense, with an applicable sentencing guideline range of 37 to 46 months. On July 13, 2004, the court followed the parties' recommendation and sentenced defendant to 37 months.

Defendant states the basis of his motion to vacate as follows: "At the time of my sentence, I had 3 misdemeanor warrants for my arrest – 1 in Portland, OR, 1 in Tuscon, AZ, and

1 in Ware Shoals, SC. That was used to increase my sentencing level from category 1 to category 3." While the legal basis of defendant's motion is far from clear, the timing of defendant's motion, filed approximately two weeks after the Supreme Court's decision in *United States v. Booker*, 125 S.Ct. 738 (2005), suggests defendant hopes to invoke *Booker* in collaterally challenging his sentence. Defendant's hopes are misplaced, however, because *Booker* does not apply retroactively to cases on collateral review. See *Green v. United States*, 397 F.3d 101 (2d Cir. 2005); *Humphress v. United States*, 398 F.3d 855 (6th Cir. 2005); *McReynolds v. United States*, 397 F.3d 479 (7th Cir. 2005); *United States v. Price*, 400 F.3d 844 (10th Cir. 2005); *Varela v. United States*, 400 F.3d 864 (11th Cir. 2005). Because defendant offers no other basis supporting his motion to vacate or amend his sentence, defendant's motion is DENIED.

DATED this 7 day of April, 2005.


MICHAEL W. MOSMAN
United States District Judge